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[Req. No. 21985]

FILED
FEB 2 1931
CHARLES ELMORE CROPLEY
CLERK

IN THE

# Supreme Court of the United States

October Term, 1929

No. [redacted], ORIGINAL

STATE OF NEW JERSEY,

*Plaintiff,*

against

THE CITY OF NEW YORK,

*Defendant.*

## PROPOSED REPLY TO PLAINTIFF'S ANSWER TO DEFENDANT'S MOTION FOR LEAVE TO FILE AMENDED ANSWER, ETC.

ARTHUR J. W. HILLY,
*Corporation Counsel,*
*Solicitor for the Defendant,*
*The City of New York.*

E. W. TRAVER, Law Printer, 154 Nassau St., N. Y. (Tel. BEekman 3-2726)

[Req. No. 21985]

IN THE

# Supreme Court of the United States

October Term, 1929

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| State of New Jersey, *Plaintiff,* against The City of New York, *Defendant.* | No. 18 Original |

## NOTICE

To:

Hon. William A. Stevens,
*Attorney General of the State of New Jersey;*

Hon. Duane E. Minard,
*Assistant Attorney General of the State of New Jersey, Solicitors for the Plaintiff.*

*Sirs:*

Please be advised that on Monday, February 2nd, 1931, the defendant, The City of New York, will apply to the above named Court for leave to file its proposed reply to the plaintiff's answer to

defendant's motion for leave to file an amended answer, etc., a copy of which proposed reply is annexed hereto.

Dated, January 31, 1931.

ARTHUR J. W. HILLY,
*Corporation Counsel,*
*Solicitor for the Defendant*
*The City of New York.*

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929

STATE OF NEW JERSEY,
*Plaintiff,*

against

THE CITY OF NEW YORK,
*Defendant.*

No. 18
Original

IN EQUITY

**Defendant's Proposed Reply to Plaintiff's Answer to Defendant's Motion for Leave to File Amended Answer, Etc.**

Defendant requests leave to reply to plaintiff's answer to defendant's motion to amend its original answer, etc., and says:

I. Replying to paragraph 3 of the answer defendant says that the adjournment taken at the end of the hearing on April 8th, 1930, was as stated by the Special Master at the desire of the defendant "with the view possibly of introducing further testimony," whereupon adjournment was taken to April 14th, 1930 (S. M. 2048). There is no record of anything transpiring on April 14th and the next record of proceedings appearing in

the minutes of the meeting of November 25th, 1930. From these minutes it appears that counsel for defendant had attempted to examine certain minutes or documents of the New Jersey State Board of Health at Trenton, N. J., in order to find out what action had been taken in respect to beach and water pollution at Long Branch and Asbury Park by defective sewers of those cities, but had been refused access to the minutes apparently for the reason that he could not specify the exact thing he wanted. It was not until the hearing before the Special Master on November 25th, 1930, that it was possible to obtain from defendant a consent to produce what was wanted and which was introduced in evidence at the hearing of December 5th (S. M. Hearing or Conference of November 25th not given page numbers).

II. Replying to the statement in paragraph 3 of the answer defendant says that the writer of this reply saw the Special Master on January 15th and told him that he did not expect to be ready on February 4th and asked him what his attitude in regard to a short postponement would be whereupon the Special Master told him to get in touch with the plaintiff's counsel to see if he would consent thereto. Defendant emphatically denies that any application for an adjournment was then made or denied by the Special Master. It would have been highly improper to make such an application in the absence of plaintiff's attorney but there was nothing improper in ascertaining the Special Master's attitude in case plaintiff's consent could be obtained. The Special

Master in the course of the conversation stated that no amended answer had been received from the City. Up to that time the writer had given no particular thought to amending the answer as he had not been employed until the hearings were closed. Thereafter he considered the matter carefully in the light of the authorities and determined to make the application to amend which was brought on at the earliest possible moment. Defendant therefore denies that this motion to amend the answer is an expedient adopted by defendant to prevent argument before the Special Master. The reason for much of the delay in this case was because of engagements of plaintiff's trial counsel in other matters.

III. Time does not permit of a specific or complete reply to all of plaintiff's statements in its answer, but in paragraph "13" plaintiff states that the proposed amended answer does not conform to the proof. The only way to determine that fact is to submit before the next session of this Court the proof, *i.e.* stenographer's minutes of the testimony of certain witnesses to the Court and defendant begs leave that an opportunity be granted it to print and submit to this Court such testimony consisting of less than 400 pages of typewritten stenographer's minutes.

ARTHUR J. W. HILLY,
*Corporation Counsel*
*of the City of New York,*
*Solicitor for Defendant.*

ELLIOT S. BENEDICT,
J. JOSEPH LILLY,
*Of Counsel.*